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SUMMARY RECORD OF THE 6th MEETING

Chairman: Mr. BIEGMAN
(Vice-President of the General Assembly)

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In the absence of Mr. Essy (President of the General Assembly), Mr. Biegman (Vice-President of the General Assembly) took the Chair.

The meeting was called to order at 5.55 p.m.

ADOPTION OF THE AGENDA OF THE FORTY-NINTH REGULAR SESSION OF THE GENERAL ASSEMBLY AND ALLOCATION OF ITEMS (continued)

Request for the inclusion of an additional item submitted by Italy (continued) (A/49/234 and Add.1)

1. The CHAIRMAN invited the Committee to resume its consideration of a request by a number of countries for the inclusion of an additional item entitled "Capital punishment", contained in document A/49/234 and Add.1. At its 5th meeting the Committee had decided to defer its recommendation on the request.

2. Mr. KHAN (Pakistan), speaking as Chairman of the Islamic Conference of Foreign Ministers of the Organization of the Islamic Conference (OIC), said that OIC members had met that morning to discuss the request contained in documents A/49/234 and Add.1. While recognizing the right of States to request the inclusion of additional items, OIC was of the view that the request pertained to a highly sensitive and complicated issue, and warranted further and thorough consideration. OIC was not in favour of including the additional item. However, if a decision was taken to include it, the Sixth Committee would be the only appropriate forum for its consideration, as the question was legal in nature and had nothing to do with human rights. In that context, the Chairman of OIC had addressed a letter to the Chairman of the General Committee. In the interest of achieving consensus on the issue, OIC had also requested the countries which had signed the request to consider allocating the additional item to the Sixth Committee.

3. The CHAIRMAN said that the representative of Italy had asked to participate in the discussion, in accordance with rule 43 of the rules of procedure.

4. At the invitation of the Chairman, Mr. Fulci (Italy) took a place at the Committee table.

5. Mr. FULCI (Italy) announced that Mexico had become the thirty-third country to sign the request for the inclusion of capital punishment in the agenda of the General Assembly. He wished to confirm that, in a spirit of compromise, the submitting countries were willing to accept the proposal put forward at the Committee's 5th meeting by Mr. Cisse (Senegal), the Chairman of the Third Committee. Under that proposal, the question of capital punishment would become sub-item (e) of agenda item 100 entitled "Human rights questions", which had already been allocated to the Third Committee. Unfortunately, he had specific instructions from his Government, to make no further concessions. In particular, the allocation of the question to the Sixth Committee, rather than

to the Third Committee, was unacceptable for the following three reasons: first, capital punishment had always been debated by the Third Committee as a human rights issue. A change of forum at that point would be extremely difficult to explain to the Italian Parliament and public. Second, if the question were allocated to the Sixth Committee, it would require the addition of a separate agenda item, which would create the very problem the Senegalese proposal sought to resolve. Third, it was the practice of the Sixth Committee to finish its work by the week of Thanksgiving, in other words, in less than two weeks from the current date. That hardly allowed time for the 33 countries which had signed the request to express their views on such an important issue.

6. Under those circumstances, the only alternative was to defer consideration of the question until the following General Assembly, which ran counter to the mandate he had received from the Italian Parliament. It was his strong hope that the recommendation to include the item and to allocate it to the Third Committee as sub-item 100 (e) would be adopted by consensus. However, if that proved impossible, a vote should be taken at that meeting. In the past five years, precedents had been set for proceeding to such a vote in the General Committee.

7. Mr. SISOWATH (Cambodia) said that his delegation fully supported the inclusion of the additional item. After more than two decades of senseless killings and suffering, the new democratically elected Cambodian Parliament had abolished capital punishment. The decision had been taken after a lengthy debate and had been strongly recommended by representatives of the international community who had participated in the United Nations Transitional Authority in Cambodia (UNTAC). As a Buddhist country, Cambodia practised tolerance and believed that only God had the divine right to take away human life. As the Khmer Rouge continued to wage war and massacre innocent civilians, the issue had once again become the topic of a lengthy debate in the Parliament. The abolition of capital punishment was enshrined in the new Constitution and was strongly supported by the King and the Government in the interest of national reconciliation. Cambodia was the only country in South-East Asia which had a permanent resident representative of the United Nations Assistant Secretary-General for Human Rights.

8. The request for inclusion of the additional item and the draft resolution appended to it were not intended to criticize or condemn Member States, but rather to emphasize that human life was precious. Participants in the discussion, particularly countries like Cambodia which had signed the request, felt very strongly that the issue should be thoroughly debated by the international community. His delegation supported the inclusion of capital punishment as sub-item (e) under agenda item 100 and hoped that the draft resolution would be adopted by consensus.

9. The CHAIRMAN said that the representative of the Islamic Republic of Iran had asked to participate in the discussion. If he heard no objection, he would take it that the Committee wished to accede to that request.

10. At the invitation of the Chairman, Mr. Khoshroo (Islamic Republic of Iran) took a place at the Committee table.

11. Mr. KHOSHROO (Islamic Republic of Iran) said that compassion for persons sentenced to death - even if such persons had been duly tried and convicted - was deeply rooted in the Islamic system of criminal justice. None the less, Islam recognized the legitimacy of capital punishment for a limited number of heinous crimes as a means of defending the safety, integrity and well-being of society at large. As his country applied the rule of Islamic law, it opposed any attempt to abolish capital punishment globally. Capital punishment was the most effective deterrent to crime, particularly in the complex modern world. His delegation opposed the inclusion of an additional item on substantive grounds.

12. The CHAIRMAN said that the representative of Malaysia had asked to participate in the discussion. If he heard no objection, he would take it that the Committee wished to accede to that request.

13. At the invitation of the Chairman, Ms. Ariffin (Malaysia) took a place at the Committee table.

14. Ms. ARIFFIN (Malaysia) said that her delegation was opposed to the inclusion of the additional item, as it completely ignored the cultural diversity of States and of national legal systems. Every State had the sovereign right to choose the most appropriate penal system in response to the needs of its society. It was regrettable that the countries which had signed the request were seeking action by the General Assembly in a hasty manner without allowing an opportunity for further consultation on an issue that was not urgent. Her delegation preferred to see a decision taken by consensus but, failing that, believed that the most appropriate forum for consideration of what was clearly a legal issue was not the Third Committee, but rather the Sixth Committee.

15. The CHAIRMAN said that the representative of Andorra had asked to participate in the discussion, in accordance with rule 43 of the rules of procedure.

16. At the invitation of the Chairman, Mr. Minoves-Triquell (Andorra) took a place at the Committee table.

17. Mr. MINOVES-TRIQUELL (Andorra) said that, for centuries, Andorrans had been concerned about matters of human dignity, perhaps because human life was deeply cherished in such a small and close-knit country. The last pronouncement of the death sentence in 1945 had sent a shock wave through society and was still a topic of Andorran literature. The death sentence had been formally abolished in 1990 and was prohibited by the Constitution of 1993. His delegation hoped that the recommendation to include capital punishment as sub-item (e) under agenda item 100 would be adopted by consensus.

18. Mr. YASSIN (Sudan) said that, at the outset, his delegation had been opposed to inclusion of an item on capital punishment in any form. However, in the interest of maintaining the Committee's tradition of consensus, it was willing to make a concession and agree to consideration of the item, by the Sixth Committee, which had the legal expertise to deal with it. With all due respect to the representative of Italy, when addressing an international forum, one should not make reference to the instructions of national parliaments or attempt to impose their will on the international community. The countries which had signed the request were not making any concession at all in agreeing to allocate the item to the Third Committee rather than to the plenary, for in the explanatory memorandum contained in the annex to document A/49/234, they had already named the Third Committee as the most appropriate forum. In any case, the question would ultimately be referred to the plenary whether it was debated in the Third Committee or the Sixth Committee. In conclusion, any debate on the item should be characterized by respect for the sovereignty of States.

19. Mr. PIRIZ-BALLON (Uruguay) said that the failure of all efforts to achieve compromise merely illustrated that capital punishment was a passionate issue for both Governments and public opinion. His delegation insisted that the question should be included in the agenda of the forty-ninth session and was in favour of the compromise arrangement whereby it would become a sub-item of agenda item 100 allocated to the Third Committee. As a sponsor of the draft resolution, Uruguay did not seek to impose policies or measures on other States, for whose internal jurisdiction it had the greatest respect. It had equal respect for Islamic beliefs and jurisprudence on which the arguments of the Sudan and other Muslim countries were founded and believed that public opinion would appreciate those arguments as well. He appealed to the representatives of the Islamic countries not to oppose a debate of the question in the Third Committee, where delegations would have an opportunity to express their divergent views. Consensus would be an ideal situation but it should not become a paralysing tactic comparable to the veto. If no consensus was achieved, his delegation would be in favour of deciding the question by a vote.

20. The CHAIRMAN said that the representative of Malta had asked to participate in the discussion of the item in accordance with rule 43 of the rules of procedure.

21. At the invitation of the Chairman, Mr. Cassar (Malta) took a place at the Committee table.

22. Mr. CASSAR (Malta) said that he and the other signatories of the letter dated 21 October 1994 and addressed to the Secretary-General (A/49/234) had been deeply aware of the cultural diversity and varying legal systems in different States; he believed that the draft resolution reflected that awareness. That did not mean, however, that the General Assembly could not or should not discuss an international evolution to a common position. Sensitivity to cultural diversity had led the signatories to recommend that the question should be assigned to the Third Committee. The views of those opposing the inclusion of the item in the agenda deserved respect, but the most weight should be given to the statement by the representative of Cambodia, a country which had undergone

great hardship, from which the importance of the right to life could be fully understood in a situation where it was so easily trampled underfoot. Recalling that the current discussion was purely procedural, he urged the Committee to agree on the inclusion of the item by consensus. All would be subsequently free to argue the substance within the Third Committee.

23. Mr. SUCHARIPA (Austria) supported that view. Capital punishment was an extremely important issue which merited discussion, and he was grateful to the Italian Government and parliament for initiating the debate on including it in the agenda. He reminded the Committee of the democratic traditions of the United Nations, under which the initiators of requests had the right to have the issues in question discussed in depth by the General Assembly. The main purpose of the current discussion was that the General Assembly should have sufficient time to discuss the matter. All other issues - such as how best to proceed or which Committee should have the item assigned to it - were secondary. His country had supported the request for capital punishment to be included as a separate agenda item, in view of its importance. It was also ready to accept its inclusion as a sub-item. It was not appropriate to assign the item to the Sixth Committee, since that Committee, although dealing with legal matters, was concerned above all with the relationships between States. In any case the Third Committee also dealt with legal questions. In order to achieve consensus he put forward another possible course of action. Agenda item 100 (a) dealt with the implementation of human rights instruments. Given that there existed the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, he thought that, if adequately treated, the issue of capital punishment could be included under that sub-item. If his suggestion proved unacceptable he feared that the Committee would inevitably have to proceed to a vote.

24. Mr. VILCHEZ ASHER (Nicaragua) said that the inclusion of the item in the agenda meant simply that the United Nations would have the opportunity to examine the issue of capital punishment, with all sides presenting their arguments for or against. He believed that the draft resolution had quite enough flexibility to ensure that no country need go against its policies, beliefs or traditions. His delegation supported the compromise whereby the item should be assigned to the Third Committee as a sub-item under agenda item 100. If consensus on that compromise was not reached, he supported the representative of Uruguay in the belief that the issue would have to go to a vote.

25. The CHAIRMAN said that the representative of Egypt had asked to participate in the discussion. If he heard no objection, he would take it that the Committee wished to accede to that request.

26. At the invitation of the Chairman, Mr. Eldeeb (Egypt) took a place at the Committee table.

27. Mr. ELDEEB (Egypt) was in sympathy with the statements that had been made in favour of strengthening human rights. His delegation's position was that capital punishment was itself supportive of human rights. Given the importance of the right to life, capital punishment, if applied only when it was necessary

to eliminate crime, could contribute to saving life: a potential murderer might think twice about putting an end to another person's life if his own life was forfeit. Islamic legislation, which was based on the Koran, sought to preserve human life. He added that capital punishment existed in many countries, which sought thereby to combat crime. With regard to the suggestion to include the matter under agenda item 100 (a), making use of the Second Optional Protocol to the International Covenant on Civil and Political Rights, he pointed out that the optional nature of the Protocol existed precisely because, depending on their religious or cultural systems, countries were free to subscribe to it or not. That freedom would be violated if the matter were discussed in those terms at the General Assembly and would therefore be an attack on human rights. If the General Assembly did decide to discuss the issue, it should be assigned not to the Third Committee, but to the Sixth, since capital punishment - whether its application or its abolition - was fundamental to the legal system of States in various countries and should therefore be discussed by the Committee concerned with legal matters.

28. Mr. LEGAL (France) said that he would not speak about the substance of the initiative, since that would be out of place at a procedural meeting. If it came to a vote, his country would vote for the inclusion of capital punishment in the agenda. He added that he found very curious the proposal that if it was included it should be assigned to the Sixth Committee. It would be absurd to suggest that all legal matters should be dealt with by the Sixth Committee; the Third Committee dealt with the legal aspects of human rights all day long. If all legal human rights instruments were referred to the Sixth Committee, the Third Committee would have nothing left to do and the Sixth Committee, its programme already overloaded, would be busier than ever. Moreover, the proposal betrayed great inconsistency: the Sixth Committee concerned itself with international law, yet those proposing to assign the issue of capital punishment to it insisted that their State sovereignty was at risk and that there was interference with their domestic criminal legislation. He added that it was extremely restrictive to say that the right to life had nothing to do with human rights.

29. Mr. FULCI (Italy) said that he had listened with great attention and respect to all the statements that had been made, but the one made by the representative of Cambodia had been deeply moving. He associated himself with other speakers in recalling that the issue at hand was of procedure, not substance. As for the compromise suggested by the representative of Austria, he had proposed a solution along those lines to his authorities, but they had pointed out that the General Assembly had not discussed the issue for five years and that it was time for it to be discussed in specific terms. All that was required was for the two words "capital punishment" to appear as agenda item 100 (e).

30. The CHAIRMAN noted that some measure of consensus could be achieved if the two aspects of the issue before the Committee - namely its inclusion as an item in the agenda at all and, if so, to which Committee it should be assigned - could be considered separately. On the first aspect he detected the will for compromise. He therefore took it that it was the wish of the General Committee

to recommend the inclusion of the additional item in the agenda of the current session.

31. It was so decided.

32. The CHAIRMAN said that he would gladly suspend the meeting if he saw any hope of reaching agreement on whether the matter should be assigned to the Sixth Committee or as a sub-item to the Third Committee. He saw no such hope, however. He therefore invited the members of the Committee to vote by show of hands on the allocation of the item to the Third Committee.

33. The proposal was adopted by 17 votes to none, with 3 abstentions.

34. The Committee decided to recommend that the item entitled "Capital punishment" should be allocated to the Third Committee as sub-item (e) of agenda item 100 (Human rights questions).

35. Mr. KHAN (Pakistan) wished it to be recorded that his delegation had not participated in the vote.

36. Mr. YASSIN (Sudan) said that his delegation had not participated in the vote in the interests of consensus. It had not, however, agreed or consented to the action that had been taken.

37. Mr. HUDYMA (Ukraine) said that it was open to all to request the inclusion of an item in the agenda. Although capital punishment existed in his country, he supported the position expressed by the representative of Italy and hoped that a discussion of the matter might enable his country to draw helpful conclusions.

38. Ms. CHEN Wangxia (China) said that her country had abstained because capital punishment was a complex legal question. It was on the statute book of various countries, in accordance with their legal systems, and would therefore have been most appropriately allocated to the Sixth Committee.

39. The CHAIRMAN said that the report of the General Committee on action taken at the meeting would be considered by the General Assembly.

The meeting rose at 7 p.m.